



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

November 2, 2001

Reply To  
Attn Of: ECO-083

REC'D NOV 6 2001

Ms. Judy Linton  
U.S. Army Corps of Engineers  
PO Box 2946  
Portland OR 97208-4373

RE: Maintenance Dredging and other Regulatory Actions for Chevron and Port of Portland  
Terminals 2, 4 and 5

Dear Ms. Linton:

This letter confirms decisions reached at a joint meeting with Mark Siipola and yourself (Corps); Tom Melville, Oregon Department of Environmental Quality (ODEQ); and John Malek, U.S. Environmental Protection Agency (EPA) at your offices on October 2, 2001, regarding two pending applications to conduct work located in EPA's area of interest between Willamette Falls and Rivermile 0.0 of the lower Willamette River, in Oregon. Three separate issues were of concern: (1) whether EPA had reservations about allowing these regulatory actions to proceed since they are located within the area of interest recently listed by EPA's Superfund program; (2) whether the projects themselves had followed the assessment requirements and protocols of the multi-agency approved and implemented *Dredged Material Evaluation Framework, Lower Columbia River Management Area* (DMEF, 1998) in assessing sediment contamination or whether additional assessment was necessary; and (3) ensuring to the maximum extent possible without occasioning undue delay that the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) federally permitted release defense cannot become a vehicle for any permit holder, or other CERCLA potentially responsible party who may claim to be adversely affected by the activities of a permit holder, to assert that improvident permit issuance caused and/or exacerbated alleged adverse environmental impacts. We are determined to ensure that EPA, ODEQ and the Corps fully support each other's decision-making processes as they may affect existing contamination in the Lower Willamette River/Portland Harbor.

Concerning the first and third issues, EPA certainly does not wish to impede or delay maintenance dredging actions in the Lower Willamette River unless those actions would increase risks to human health and the environment, limit potential future remediation options, or unduly expose any of the three regulators to preventable risks of allegations of liability. EPA's Portland Harbor Superfund project managers are working together with their counterparts at ODEQ to develop an efficient means of communicating cleanup-related technical concerns via well established procedures currently implemented by John Malek and Tom Melville of EPA and

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ODEQ's respective regulatory dredging programs. However, based on DMEF requirements and protocols for maintenance dredging, and on a review by EPA's Superfund project team of potential Superfund-related impacts, EPA encourages the Corps to move forward on these two projects now. We believe this recommendation properly balances the need for investigation and cleanup of the Willamette River with the need to support continued economic activity in the area.

It should also be noted that information generated by the regulatory process, including assessments of sediment quality under the DMEF, could be of immense value to EPA and ODEQ's cleanup efforts. For this reason, EPA and ODEQ specifically request 24-hour prior notification of maintenance and/or dredging activities so we may be on-site to observe environmental conditions. EPA has also requested to review existing, ongoing permits and preview new applications for all section 10/404 activities received by the Corps' Portland District Office for the area of interest in the Lower Willamette River. Toward this end the Corps has provided electronic spreadsheets of recent and active permits for EPA to review. Discussions have begun between EPA and the Portland District Planning and Operations programs toward a formal coordination agreement(s) regarding maintenance and environmental dredging, future permit issuance and managing Corps liability for U.S. Moorings, as well as coordinating responses regarding allegations by private responsible parties regarding Corps liability for past navigation dredging over the last half century. As similar circumstances exist regarding the Lower Duwamish Waterway in Washington with the Seattle District, the Northwestern Division office of the Corps, which oversees the two districts, is involved in these discussions.

While these broader discussions are occurring, the following three projects have already gone to public notice and await a regulatory decision. One project is presently undergoing permit processing and additional information will be necessary before a permit decision can be made. EPA provided a draft condition of admittedly limited utility ("Superfund Condition") that has been used by the Seattle District Regulatory program for permit actions in Commencement Bay and Eagle Harbor. It essentially states that the CERCLA federally permitted release defense is not applicable, but it may well not be possible for this administrative statement to in any way limit of affect a defense granted to permittees by Congress. Portland District and Region 10 counsels are consulting to modify the language for use in Oregon and this "Superfund Condition" will be added to all Corps regulatory actions (individual permits, nationwide, and letters of permission) within the Lower Willamette River area of interest since it may prove efficacious to some degree and certainly does no harm.

The following narratives describe the agreed outcome of Corps, EPA, and ODEQ discussions:

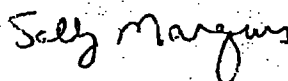
- Chevron, PN 97-00361. RM 7.8. This is an issued permit for maintenance dredging at the site for multiple years (issued 30 September 1997, expires 1 October 2002). Existing condition requires periodic recharacterization of the dredge prism per the DMEF; this has been done. PCBs above screening levels (DMEF) were identified in Z-sample (below dredging prism) at one location: only at -39 feet. Levels were > 205 ppb. PCB's were not detected shallower than -39 feet or deeper than - 40 feet. The applicant had proposed

to dredge to -41 feet. Given the imprecise character of dredging, and the tendency to overdredge, it would be difficult to maintain a dredging level at less than 39 feet to avoid the contamination zone. Under the existing permit, disposal of this material is to be upland at Ross Island. Applicant wishes to modify this to upland landfill at Roosevelt facility in the State of Washington. Decision made to modify existing permit to direct this disposal option. Conditions: (1) Superfund Condition; (2) Applicant will be required to conduct new characterization studies (per DMEF) for next year's dredging, if performed [if dredging is not performed next year, permit will expire before the next dredging season]; (3) Corps will require applicant to overdredge the unit where PCBs were discovered (to -41 or -42 feet) which effects a removal of the contamination OR to redefine the dredge prism such that at least two feet of material is left undisturbed as a temporary cap.

- Port of Portland, Terminal 2, PN 2001-00688. RM 10.0. Project purpose: maintenance dredging of approximately 25,000 cy/year. Disposal would be through the Port of Portland's Suttle Road re-handling facility. Return water to the Columbia River is subject to monitoring based on 401 certification for the site. Testing has been conducted according to the DMEF, and EPA and ODEQ have completed their review comments provided to Mark Siipola. Informal consultation for ESA is underway; accordingly it is unlikely that all approvals will be secured to allow dredging this calendar year. Conditions: (1) Superfund Condition; (2) Applicant will be required to inform Corps and EPA of ultimate disposal of material if removed from the re-handling facility.
- Port of Portland, Terminal 5, PN 2001-006889. RM 1.0. Project purpose: maintenance dredging of approximately 8,000 cy/year. Project status is virtually identical to Terminal 2 project (above). Informal consultation for ESA is underway; accordingly it is unlikely that all approvals will be secured to allow dredging this calendar year. Conditions: (1) Superfund Condition; (2) Applicant will be required to inform Corps and EPA of ultimate disposal of material if removed from the re-handling facility.
- Port of Portland, T4 - Toyota Terminal, PN 2001-00553. RM 4.8. Project purpose: Repair, restructure, and rehabilitation of the existing terminal. This application has just been received and everyone is very early in reviews. Some material from the shoreline will be "disturbed" and both ODEQ and EPA agree that testing of that material is necessary. The applicant will be directed to contact the RMT for assistance in DMEF testing. Other issues are also under review, e.g., stormwater plans, revegetation plans, etc. While EPA has no objections to the Corps' continuing processing of this project (subject to additional information and eventual conditioning), more information is needed before a final determination can be made.

By this letter, EPA recommends proceeding with these projects subject to the preceding paragraphs. Future coordination for these and other regulatory actions between Willamette Falls and River Mile 0.0 should be directed to John Malek. He may be reached by phone at (206) 553-1286, or fax at (206) 553-1775, or e-mail at [malek.john@epa.gov](mailto:malek.john@epa.gov). Mr. Malek will assure coordination with the Superfund Remedial Project Managers, Wallace Reid and Chip Humphrey, and other appropriate EPA and ODEQ staff.

Sincerely,



Sally Marquis, Manager  
Aquatic Resources Unit

cc:

Tom Melville, ODEQ  
Stephanie Stirling, Seattle District  
Mark Siipola, Portland District  
Yvonne Vallette, OOO  
Jim Reese, Northwestern Division  
Chip Humphrey, OOO  
Ann Uhrich, Seattle District  
Wallace Reid, ECL